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CONSERVATION COMMISSION

MEETING MINUTES

March 25th, 2010

Beginning at 7:30 p.m.

City Hall, Room 209

Meeting called to order at 7:35 p.m.

MEMBERS PRESENT: I. Wallach, Chair, S. Lunin, Vice-chair, D. Green, J. Hepburn, and R. Matthews, N. Richardson, J. Sender

MEMBERS ABSENT: D. Dickson

MEMBERS OF THE PUBLIC: See attached sign-in sheet

46 Allen Ave. –Beethoven Brook-NOI –DPW Maintenance on clogged pipe was followed by excavation of stream channel, then placement of concrete blocks along sides of stream and rip-rap altered stream bank character;

Report: Engineering Dept. has prepared a restoration plan. However, because the stream (and the culvert from which it exits) is not centered in the easement, grading work on the east side of the bank would be outside the easement on the property of the abutter at 84 Beethoven Ave. The property owner at 64 Allen Ave. has a garage in the easement and virtually up to the bank of the stream, so it would be difficult to relocate the pipe and stream very far to the west. I consulted with the Law Department, with the following suggestions – report at meeting.

Meeting: J. Daghljan, Engineering, and T. Jerdee, Utilities were present for the project. J. Daghljan reported that research for the restoration found there was an easement taken in 1939, and T. Jerdee reports he has cleaned the stream three (3) times in the last 4-5 years, with access provided by the owner at 64 Allen Ave. Comparison of an 1886 map with the 1930 map indicates that Cold Spring Brook was culverted at Beethoven School and now flows into City Hall Pond. Engineering requests a site visit with Commission members, and believes the channel is not a brook but a ditch; they claim no bordering vegetated wetland, and want the channel labeled a “drainage ditch.” Wetland law states that if you create a resource area, it is a resource area. Applicant agrees to continue to April 29th for gathering of additional information and to schedule a site visit.

Crystal Lake Bathhouse Drainage Improvements – Request for Extension of OOC-DPW;

Report: You may remember that Maria Rose, the Environmental Engineer, came in ~ a year ago to ask for a Certificate of Compliance for installation of some drainage improvements. She was offered the opportunity to withdraw the request, else the Commission indicated they would deny the request, since not all the work was completed. The Order expires this month. If the Commission grants an extension, Engineering says they will need 2 yrs to complete a new plan and do work. The Commission may deny request for an extension (see 10.05(8)(b)....” Where incomplete work is causing damage to the interests identified in M.G.L. c. 131 sec. 40. “ If the OOC is extended, it may be for 1, 2, or 3 years. I recommend extension. Applicant should come in with new plans within 6 months, and work should be completed and site re-stabilized within the 2-year period.

Conservation Commission

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Meeting: Maria Rose appeared for Engineering and said the Master Planning process for the park area is moving slowly but is supposed to be completed in the next few weeks. **Motion to extend the Order for two (2) years, provided engineering submits a new draft plan to the Commission within six (6) months (by September).** **Motion seconded. Vote: All in favor. Motion passed.**

CSX Vegetation Management Plan RDA – CONTINUED TO MAR 25TH MEETING. ROW spraying of herbicides in riverfront and buffer to bank of the Charles River, in bordering vegetated wetlands, and possibly floodzone, and in an area proximal to a public drinking water supply. Awaiting site visit to confirm wetland resource area(s);

Meeting: Commission agreed to continue the hearing to April 29th, per applicant's emailed request.

134 Vine St., RDA – Requesting continuance to April 29th. Landscaping in the 100 ft buffer to bordering vegetated wetland. Awaiting revised planting plan;

Meeting: Commission agreed to continue the hearing to April 29th, per applicant's request.

34 Farwell St. –Assessor's records show house previously owned by Angelo D. Paolini, who filed with Conservation in 1984 to put an addition onto existing house. Assessor's representative visited house in March 2000, around time of recorded sale of property to Angelo D. Paolini and Patricia Paolini. No second house on property at that time. Assessor's office visited property in 2009 and found second house. We estimate second house placed on lot after March of 2000. At last meeting, owner agreed to remove rear house that is partly on DCR property) and 4 storage sheds from lot by March 25th. If house not removed, owner is to appear at next meeting.

Report: OOC issued in 1984 for an addition to pre-existing house in front. Condition 12(b) states, "The Charles River bank from the 26.9 (Newton Base) Flood Plain Elevation to be graded south/southwesterly to a 2:1 slope on land of the Metropolitan District Commission (apparently to correct for past fill). There is no as-built in file, no COC was issued, and I do not know whether the work done is in compliance with the old OOC. The garage and paved area have no permits. The only building permit for the entire lot is for siding and re-roofing. M. Peirce says owner has not removed house, but I think sheds have been removed- a site visit is scheduled for Friday. All the washing machines were removed from lot. All records indicate second house was definitely placed on lot after August 1996, making it subject to the Riverfront Act and the 5000 sf or 10% limitation. Impermeable area without second house is ~5,000 sf. Second house would put impermeable area well over 5,000 sf (10% would be no more than 1305 sf). If CC wishes to pursue violation, an Enforcement Order should be issued with short-term time limit, with copy to DCR, since part of house is on their property. The Law Department is prepared to go for injunction if compliance not obtained. Owner needs to reconcile what has been done with prior Order of Conditions and file new (after-the-fact NOI) for all work not completed under prior Order.

Work on this lot seems to indicate a whole series of violations, from an owner who is aware of the requirements and just ignores them. I strongly recommend the Commission sign an EO at the meeting and require the owner to file after-the-fact for all un-permitted work.

Meeting: No one was present for the owner of 34 Farwell Street. M. Peirce sent email today that I. Wallach read, saying he would not attend the meeting but was preparing a NOI to file in April. N. Richardson visited site with Inspectional Services Enforcement Officer, Dave Norton, on Friday, March 19th, with M. Peirce present. N. Richardson reported that second house still on lot, but the only remaining shed was adjacent to garage – all sheds at back of property adjacent to (or partly on) DCR Reservation land had been removed. Anne reported on meeting with Law Department. All evidence indicates that house and garage were put on the lot after the Riverfront Act (August 7, 1996). If the Commission wants to pursue violation, Enforcement Order (not NOI) is the way to go. It would be sent certified mail, so there would be a short turn-around time. Also, the original OOC issued in 1984



has a condition indicating some fill was to be removed, and indicates it was to restore conditions from prior violation. Owner has not reported what was done. **Motion to issue an Enforcement Order that requires removal of the second house in 3 weeks (by April 15th), and owner shall file an “as-built” for COC for 1984 Order (as some of work appears to be mitigation for violation before filing). Motion seconded. Vote: S. Lunin, N. Richardson, J. Hepburn, I. Wallach and D. Green vote “aye.” R. Matthews opposed. Motion passed.**

3 Fuller Ave.-Request for COC – Applicant requesting COC and sign-off for occupancy, although restoration of wetland and site re-stabilization not done;

Report: Owner has phoned me to ask if I will sign off on Certificate of Occupancy. I have not signed off, as I am waiting for wetland violation to be addressed: mitigation plantings should be certified by consultant and seed mix should be sprouted, and site re-stabilized. Owner is still foot-dragging and not getting mitigation/restoration completed as a priority. They are not ready for COC.

Meeting: Sandra Russo, owner, and Michael Roman, contractor, present to discuss project. Shed has now been relocated (since Planner’s visit). Seeding of wetland and stabilization is the only thing now not in compliance. Owner said seed has been purchased. I. Wallach says engineer letter certifies all other plantings were done, since that is not mentioned as one of the things not completed. The Commission will accept a performance bond for completion of the work. R. Matthews proposes the Commission issue a Certificate of Compliance and let ISD issue a temporary Certificate of Occupancy (we hold bond in escrow until the remaining work is done). Owner offers \$1,000 bond and letter granting right of access. **Motion to accept bond and letter and issue Certificate of Compliance with work to be completed by April 30th, 2010. Motion seconded. Vote: All in favor. Motion passed.**

Countryside School Wetland Alteration & Removal of vegetation – Eric Olsen & Emily Ostrower, Principal, Countryside Day School;

Report: See letter in packet – I did not include all the children’s letters. Also, I did **not** provide any prior permission for removal of invasives from wetland, contrary to statement in letter.

Meeting: Eric Olson present, but Emily Ostrower said she would like to come in April and be early enough to bring some of her students. He said he had two (2) requests. One is to explain the nature of the Countryside request and secondly he wanted to address the general topic of invasive, i.e., harmful plants, versus naturalized non-native plants. He said there is a ‘leave it alone’ bias in the Wetlands Protection Act. He requests Newton ask the state to help in this dichotomy of goals in the WPA – he thinks the state is more attuned. He said suburban wetlands have slipped into degradation, and the Commission is responsible for these areas. Countryside will request aggressive invasive removal. They have several thousands of dollars for replacement native plants, etc.

10 Gambier St.-NOI –Connection to sewer line through bordering vegetated wetland and buffer to bank of Brunnen Brook;

Report: Proposal is to hook up to sewer, going through wetland to do so. Alternatives analysis submitted by Joe Porter indicates alternatives might be more costly. It is beneficial to the wetland to remove the cess pool. Wetland being mown up to fence along brook. Mowing of wetlands has, in a number of cases been considered to be “grandfathered in.” Recommend CC approve OOC with condition that re-stabilization after disturbance use wetland plants/wet seed mix, area be permanently marked and stop mowing this area. The sewer main was underwater even before the flood, and there is no de-watering plan, so engineer must wait until area is quite dry to do hook up or provide de-watering plan for approval prior to the start of work.



Meeting: Stephen Poole was present from VTP to represent the project. (Abutter notification receipts submitted early to Anne). He said there were alternatives that would not require work in a wetland, but it would involve pumping uphill and would be more expensive. The sewer line will have a stone base installed, which will wick water from the wetlands like a French drain. No mitigation has been proposed for the loss of hydric soils. Check dams can be created in the trench to reduce water movement. S. Poole says existing sewer line has similar stone base and has not drained adjoining wetland. Planner noted that wetland on site is in lower elevation area than the house – a retaining wall (not shown on plan) marks a drop in elevation between that wall and a second wall adjacent to the brook; between walls there is a bordering vegetated wetland that is being mown. **Motion to issue an Order of Conditions with standard conditions plus special condition: 1) at Environmental Planner's discretion to put in check dams, 2) establish a boundary for wetlands & no mowing in wetlands between two retaining walls, and 3) submit new plan showing the retaining wall that currently is not shown on plan. Motion seconded. Vote: All in favor. Motion passed.**

Nonantum Rd. Daly Skating Rink – NOI –Boston Academy of the Sacred Heart, Inc., which leases rink from DCR wishes to add a 4,805 sq. ft. addition in riverfront and partially in buffer to bank of the Charles R.

Report: Alternatives analysis addresses only what is “good for” applicant, not how it protects the interests under the Act. Both alternatives to the preferred one/proposed one would be better for riverfront: one would put changing rooms inside existing building and the other would put them on the east side on pavement and further from riverbank. Plan is mislabeled – 200 ft riverfront line is offset from bordering vegetated wetland and/or flood zone, not from bank, and no buffer is shown for bordering vegetated wetland to west of building – consultant is treating it as a detention pond/drainage structure. All previous filings have identified it as a bordering vegetated wetland. Frank Nichols, Engineering, and I have reviewed file and agree that numbers submitted do not add up, and we have requested corrected numbers for existing and proposed work, and for amount of work that is new vs re-development. Also, part of proposed ‘mitigation’ is for what I consider to be a **violation – on-going erosion from roof gutter run-off** – mitigation proposed is to place large areas of stone on bank. Although not shown on plan or in pictures submitted, a large trailer is parked in the location of proposed new building (partly on and partly off pavement), with no permits and no control of roof run-off. And, proposed mitigation plantings are on same side of building as proposed mitigation plantings for Nonantum Road improvements. **Recommend request continuance for additional information:** Change plan to move new building as far from river as physically possible, remove more pavement, and provide more details of planting plan to include more native trees. Trailer should be immediately and permanently removed. Show correct 200 ft riverfront area and two areas of bordering vegetated wetland with buffer zone and the flood zone elevation; re-evaluate and correct numbers provided by Green International under existing and proposed conditions for area, and for breakdown under title “Summary of impacts within the 200 foot riverfront area” included with the calculations stapled to the back of the “Checklist for Stormwater report.” Make sure calculations include all impermeable surface area on the lot, including shed in back, and roof of trailer, and whether it is to remain. Finally, a ramshackle, unsafe “dock” should be removed from the water – it is a serious safety concern for children who visit the site and a water safety hazard. A dilapidated bench in the same area should also be removed. If applicant does not wish to continue, recommend denial since two alternatives are available with less negative impact to the interests protected, especially wildlife habitat and prevention from pollution and protection from flooding.

Meeting: Scott Smyers of Oxbow Associates was present with John Giangregorio of D’AIQ Architects, Peter Green of Green International, Terry Foster and Ted Carey of Newton Country Day School. S. Smyers said the addition is only 3000 sf and they plan on capturing the 100-yr rainfall with roof drains. Since there will be no runoff from roof drains that will be an improvement. The Environmental Planner said there are still unresolved



issues. T. Foster said the trailer will be removed a week from Monday and will not be put back. The concrete gutters and run-off from the trailers have created erosion that the applicant(s) propose to mitigate. New numbers were submitted for drainage, but engineering has not had time to check them, and there's still an issue of how much is new development and how much redevelopment. Applicants request continuance to April 29th.

MBTA – Emergency Certification for repairs and installation of new pipe in track easement – needs ratification.

Report: Repairs began Wed. morning, with installation of a piece of retaining wall behind 40 Glen Ave. to hold gravel in place against future blow-out. De-watering on north side while gravel being scraped out of wetland and restored to base of track. Plan is to put in one new drain pipe parallel to tracks in drainage trench on north side within easement, else no expansion of footprint or new drainage structures and no excavation or fill outside easement. Emergency Cert. Issued, and recommend follow-up RDA by deadline for April meeting. Best Management Practices should be followed – I ordered gas cans removed from vicinity of swamp, lining for hole where de-watering (a by-pass to outflow stream) is occurring, and re-fueling of pump should occur away from wetland.

Meeting: No representative present from MBTA and repairs completed. Planner said that the Emergency Certification required MBTA to follow Best Management Practices and bring in as-built for drainage structures in immediate area and final report by filing deadline for April meeting (April 13th). **Motion by R. Matthews to ratify Emergency Certification issued by Planner. Motion seconded. Vote: D. Green recused himself; I. Wallach, S. Lunin, J. Hepburn, N. Richardson, R. Matthews voted “aye.” Motion passed.**

Violations:

116 Louise Road – Violation –site visit confirms that area of Hahn Brook Conservation area is still being treated as lawn, no wildflowers growing, and area is still being mown by owners of 116 Louise Rd.,

Report: Engineering re-established property boundary and I spoke with owners who are considering some shrubs and/or native grasses or wildflowers. Cannot attend this meeting but will come April 29th. Area needs permanent visible boundary markers.

35 Kingswood Rd. – Will re-check lowbush blueberry bushes spring of 2010;

15 Harwich Rd. –Have asked DEP to assist; nothing new.

Meeting: Owner requested permit for an alarm system, and I have not signed off on permit. DEP has lost so many people through budget cuts they cannot follow up on any but large violations. DEP suggested Commission work with the Law Department to get compliance/restoration from present owner.

46 Farwell St. – Mitigation activity at Norumbega halted due to cold weather.

Certificates of Compliance

64 Kingswood Rd. – OOC expired in 2006. As-built and certification letter received. Waiting for owner to let me know brush piles removed.

56 Farwell St. – still awaiting As-built plan.

Correspondence

Letter from Susette Barbier dated 3-12-2010.

Meeting: I. Wallach noted that the Commission has no jurisdiction over upland owned by Parks and Recreation.

**Announcements & General Business:**

Recommended new condition: CC has used condition in past that no Certificate of Occupancy will be approved by Conservation unless a Certificate of Compliance has been issued or the Sr. Environmental Planner approves a sign-off on the Certificate of Occupancy. Commissioner suggests the CC may wish to institute this as standard condition, perhaps, with some discretion to me.

Meeting: Planner reported that the Commissioner of ISD suggested the above condition. The Commission agreed to put this on the list of standard conditions.

Open Space Plan – Report – Anne

Meeting: Commission members asked what else needs to be done and what they can do to help. J. Sender said she will call Candace Havens, Interim Director of Planning to ask.

February 25th, 2010 Meeting Minutes for approval

Meeting: Motion to accept February minutes with minor edits to correct typographical errors. Motion seconded. Vote: All in favor. Motion passed.

Meeting concluded at 10:37 p.m.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner

Conserva\agmin\3-25-10minutes